

TOWN OF LEXINGTON

BOARD & COMMITTEE HANDBOOK



WITH
CONFLICT OF INTEREST
MATERIALS
REV AUGUST 2013

Dear Volunteer Citizen:

Volunteer citizen participation is the backbone of local democratic government. This handbook has been developed to articulate standards concerning the day-to-day operations and procedures expected of volunteers, as well as to assist you and your committee in complying with necessary standards defined by law and by the appointing authority.

This handbook should help committee members focus their efforts on assigned tasks rather than on the technical details of procedure. Please keep in mind that the term “committee” is used generically through this booklet to be inclusive of elected and appointed committees, commissions, boards, etc.

Suggestions for improvements and/or additions to this handbook May be sent to: townclerk@lexingtonma.gov.

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GUIDELINES FOR CIVIL DISCOURSE

The Guidelines for Civil Discourse are intended to provide a common set of expectations that can be consistent across groups, organizations, and town government. These guidelines give individuals a clear idea about what behavior is expected of them and, concurrently, what behavior they can expect from others.

The Town of Lexington respects and recognizes each citizen's right to free speech. In order to guarantee all people's right to free speech and to ensure productive civil discourse, we request that all citizens respect the following guidelines.

- **Recognize a person's right to advocate ideas that are different from your own.**

"Democracy is a means of living together despite our differences. Democratic deliberation is an alternative to physical violence. It is predicated on the assumption that it's possible to disagree agreeably, that it's better to laugh than cry, that one can vigorously contest the position of one's adversary without questioning his or her personal integrity or motivation, and that parties to a debate are entitled to the presumption that their views are legitimate if not correct."

--Thomas Mann

- **Show respect for others.**
 - Discuss policies and ideas, not people
 - Only one person should be speaking at any given time
 - Use helpful, not hurtful language
- **Speak as you would like to be spoken to.**
 - Use courtesy titles (Mr., Ms., Sir, etc.)
 - Restate ideas when asked
 - Use a civil tone of voice
- **Agree to listen.**
 - Respectfully hear and listen to differing points of view
 - When unsure, clarify what you heard
 - Realize that what you say and what people understand you to have said may be different
 - Recognize that people can agree to disagree
- **Speak for yourself, not others.**
 - Speak from your own experience
 - Use "I" statements ("I think that the ideas presented...")
- **Follow agreed upon guidelines regarding who speaks when and for how long.**

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A. GENERAL INFORMATION

- *Members must be appointed and take oath of office before any official action may be taken*
- *Members must elect a Chairperson, to direct the Committee , preside at meetings & ensure records are kept*
- *Members must submit request to appointing authority for reappointment*
- *Members must submit written resignation to Town Clerk ; excessive absenteeism may be cause for removal*
- *Members are advised to seek guidance before acting on any issue where conflict may be perceived and to publicly disclose interest in any issue before the committee*
- *Liaisons provide intercommunication and have no voting authority*

1) Appointments: The Selectmen, Moderator, School Committee, Town Manager and Superintendent of Schools are the primary officials authorized to appoint municipal and school boards and committees. Newly appointed committee members will receive formal written notification of appointment, including term of office, from the appointing authority. Members will remain on a committee until officially replaced by another committee member due to action by the appointing authority, or until formal resignation.

All appointees will receive materials from the Town Clerk and be required to affirm a written oath of office unless otherwise instructed. Formal voting of a committee member may be conducted only after the member has duly affirmed an oath of office. Committee Liaison or citizens who assist committees, not officially appointed as members, do not have a right to vote in committee proceedings.

New members to a committee or board should become familiar with the committee's specific role, powers and duties as well as the rules, regulations and any issues frequently encountered by the board or committee. Such information may be provided by the appointing authority, committee chair, or a designee.

Committee reappointment is based upon the appointing authority's evaluation of the citizen's contribution to the committee, the desirability of widespread involvement and the changing needs of the committee and the Town. In cases where special training or expertise is required, longer periods of service may be appropriate. A committee member is under no obligation to accept appointment nor is the appointing authority obligated to offer reappointment. Appointing authorities welcome and encourage recommendations on reappointment from Chairmen of any committee. Specific reasons for negative recommendations should be stated clearly.

2) Officers: Committees may, at their discretion, establish various offices within each committee. Each major committee should, at minimum, elect a Chairman and Vice-Chairman. Advisory and smaller committees may elect to conduct their business less formally. Committee officers should be elected annually, with written notification made to the appointing authority and Town Clerk.

A committee member shall be designated to keep accurate minutes of all meetings. These minutes will form the basis for an annual report from each Town committee (§ 107-1 General by-laws). (*See Town Report requirements.*)

3) Applications: Applications for committee appointments will be accepted at the offices of the Town Manager and Board of Selectmen throughout the year and when vacancies for the committee have been advertised. Upon expiration of a member's term, or a member has resigned, the upcoming vacancy will be advertised and applications will be collected from interested citizens.

Sitting members with expiring terms will be notified by letter and asked to submit a new application expressing interest in reappointment. This application will be considered by the appointing authority against those of new applicants when making an appointment decision.

In filling vacancies, the goal of appointing authorities is to find qualified and interested individuals who are broadly representative of the Town. Appointing authorities take into consideration all relevant factors.

The appointing authority may consider applications and suggestions from many sources, written and verbal expressions of interest, and recommendations by committees for which the appointment is to be made. Information on each committee is available at the Office of the Selectmen and recorded at the Town Clerk's office.

4) Resignations/Attendance: All resigning members must state their intentions in writing to the Town Clerk and to the appointing authority. As a matter of courtesy, the resigning member should send a copy to the committee chairman.

A formal letter of resignation is required for the appointing authority to act on filling open positions. Members are expected to attend every committee meeting. It is the responsibility of each committee chairman to discuss excessive absences with the member. If any problem is not resolved to the chairman's satisfaction, the problem should be delegated to the appointing authority for resolution.

5) Political Activity: Citizens appointed to public committees are not subject to any restrictions concerning political activity.

All appointed citizens have an obligation to foster and preserve a sense of public trust. Individuals must avoid becoming involved in matters that are directly affected by or affect their personal or professional interests. Each individual must make known personal issues that pertain to any matter of discussion to the committee.

The following procedures will avoid problems:

1. Disclose interest and ask the secretary to note this disclosure in the minutes.
2. Avoid participation in any discussion of the matter.
3. Abstain from voting on the matter.

This practice should be followed if there is a hint of conflict of interest. Town Counsel is available for guidance in this matter. See also M.G.L. Chapter 268A (*see Appendix*) and §48-1 & §48-2 of the General Bylaws.

B. MEETINGS

- *Meetings must be open to the public & held in an accessible public space*
- *Written meeting notices must be sent to the Town Clerk at least 48 hrs in advance (excluding Saturday/Sunday/Holiday)*
- *Meeting Notices are accepted by email if time permits*
- *Meeting Minutes must be kept and archived with the Town Clerk*
- *Committees cannot act without a quorum ~ 50% +1 of the full committee*
- *Executive Sessions may be called for specific purposes only & must be properly documented*
- *E-mail communications are prohibited except for housekeeping or administrative purposes*
- *E-mail must be retained as public record*

1) Time, Place, and Frequency: Each committee should establish a regular meeting schedule to accomplish committee objectives. Meetings should be frequent enough to ensure that the committee's charge is successfully met. Meetings must be held in a place which is open to the public. The location must be accessible to the disabled in accordance with the Americans with Disabilities Act (ADA). Committees are urged to meet in a public building.

The committee chairman may arrange for a meeting location by contacting the Town Mangers' Office (862-0500 x276). Meeting space is normally assigned on a first come, first served basis. An effort will be made, however, to keep the meeting location consistent if adequate prior notice is given.

2) Meeting Notices and Agenda: If a committee which meets on an irregular schedule plans a meeting or holds a special

meeting, all committee members should be notified in writing. An agenda must be prepared by the chairman for each meeting. This agenda should be followed and should include only action items (i.e. subjects which will require a specific motion or action of the committee). It is suggested that discussion matters be scheduled for a special meeting or placed at the conclusion of the agenda. This will help to avoid inconvenience to the citizens who attend a meeting to see action on a specific activity.

3) Public Posting: It is the responsibility of the committee Chair to give written notice to the Town Clerk of the time, date, and place of meetings. State law requires, except for emergencies, meetings must be posted 48 hours in advance, excluding Saturdays, Sundays and holidays. Notices, including meeting agenda, may be sent via email to townclerk@lexingtonma.gov. It is the responsibility of the sender to confirm receipt by the Town Clerk's Office if confirmation is not received in sufficient time to ensure compliance with 48-hour posting requirement.

Notice will be posted on the Town's web site and published in the newspaper if time permits.

4) Recordkeeping & Minutes: State law requires the committee must keep accurate written records of its public meetings, and vote to approve all minutes. The records of each regular meeting are public information. Minutes must include record of the date, time and place of the meeting, the members present and absent, documents discussed at the meeting, and any actions taken at each meeting, including executive sessions. In addition, minutes should include the following:

- Assignments to committee members
- Statements of topics discussed, etc.
- Exact wording of all motions
- All votes, and abstentions, must be recorded
- Votes in executive session must be recorded by roll call

Minutes may include summaries of discussions and a schedule of future meetings. Once minutes are accepted by committee vote they become the official record of the meeting and become a permanent

public record. Any secretarial notes or shorthand, if not destroyed once the official minutes are accepted, are considered a public document under the public records law. Minutes must be maintained permanently.

The chairman, or designee, must maintain a paper copy and an electronic version of all approved minutes for public record. As a courtesy, a copy of the minutes of each meeting should be sent to the appointing authority.

The chairman shall submit a set of committee minutes, along with an electronic version, to the Town Clerk for permanent archiving: archives@lexingtonma.gov.

It is the opinion of the Secretary of State that any video or audio proceedings, once made, are public records (unless done in executive session) and may be subject to disclosure despite the adoption of official minutes. Therefore, it is recommended that any tape recordings which the board itself has made should be reused once the official minutes have been accepted by the board.

5) Conduct of Meetings & Quorum Requirement:

The Chairman directs the meeting and the rulings of the chairman must be followed. Meetings should be conducted according to generally accepted rules of procedure consistent with Town by-laws.

A committee should establish a quorum necessary for conduct of business. This quorum must at a minimum be over half of total committee membership.

6) Open Meeting Law: The Commonwealth of Massachusetts has a very strict set of regulations governing the right of citizens to attend governmental meetings. The Open Meeting Law (M.G.L. Chapter 30A, Sections 18-25) (*see Open Meeting Law Guide & Materials*) requires that all meetings of state and local governmental bodies be open to the public. There are certain exceptions to this rule. Every committee member is provided a copy of this law to provide for an understanding and application of its tenets.

By definition, a public meeting occurs at any time a quorum of the committee or subcommittee members get together to deliberate or consider any public business or policy over which the committee has some jurisdiction or advisory power. No action of the committee or subcommittee is valid or binding unless ratified by the affirmative vote of the majority of the members voting. If a five member committee has three members present (which is a quorum), then a 2-1 vote is a valid, majority vote.

Some by-laws or state statute may specify situations (i.e. Board of Appeals) in which the vote of a majority of the entire membership is required. A review of relevant by-laws or statute is recommended to identify any such situations.

A board member who is present may abstain from voting and not affect the outcome. In the Commonwealth of Massachusetts, the court has stated under no circumstances can one vote constitute a majority of a quorum of a three-member board. In these limited circumstances of a three member board, an abstention has the effect of a negative vote.

The Massachusetts Open Meeting Law, Chapter 30A, provides for Mandatory Open Meetings, with certain exceptions, and for the keeping of minutes.

The Law requires that all meetings of elected or appointed boards, committees or subcommittees be open to the public except in nine specific situations where Executive Session may be held. No votes in open session by a governmental body, other than Town Meeting, may be by secret ballot.

The Law does not apply to chance meetings or social occasions. However, such meetings cannot be used to circumvent the requirement of discussing and deliberating at public meetings.

The Open Meeting Law does not contravene other laws, such as the Privacy Act. Any person, after informing the Chair, may record a meeting with a tape recorder or any other means of sonic reproduction and/or videotape equipment provided there is no active interference with the conduct of the meeting. The manner in which

this right is to be exercised is subject to the reasonable direction of the Chair.

Executive Session

An Executive Session is closed to the public, but the committee must first convene in an Open Session for which notice has been posted.

Procedures for Convening Executive Session

1. The session must be convened in open meeting for which notice has been correctly given;
2. The Chair announces the purpose of the executive session;
3. The majority must vote in recorded roll call to enter into executive session;
4. The Chair announces whether the meeting will reconvene in open session;
5. Votes taken in executive session must be recorded roll call votes;

Rights of Individuals

- When a governmental body wishes to discuss the reputation, character, physical or mental health, discipline or dismissal of any individual, it must notify that person in writing at least 48 hours in advance of the meeting;
- The individual may request that the meeting be held in open session;
- If an executive session is held, the individual has the right to be present during discussion that pertains to him or her, to have counsel or a representative of choice present and to speak on his or her own behalf

Records of any Executive Session remain closed to the public only as long as publication may defeat the purposes of the Executive Session. Topics discussed in Executive Session are confidential. Attendees do not discuss these matters with anyone until the purpose for the Executive Session no longer exists and the minutes can be released to the public. Releasing minutes is completed by majority vote of the appropriate committee.

Purposes/Exemptions for Executive Session

C. FINANCES

- *Purchases must be pre-approved and in accordance with purchasing procedures*

1) Purchases: A committee may incur expenditures only if money has been appropriated by Town Meeting and with prior approval of the Town Manager. Purchases must be made in accordance with the Town of Lexington Purchasing Procedures manual. Information regarding purchasing may be obtained from the Chief Procurement Officer at 862-0500 ext. 221.

2) Compensation: There is generally no provision for compensation to committee members. Their services are wholly voluntary unless otherwise indicated by law or by the appointing authority. If an expenditure is approved by the Town Manager, and money has been appropriated for it, committee members may be reimbursed for their necessary expenses in the performance of their duties while on town business.

D. PLANNING, COORDINATION, COMMUNICATION AND REPORTING

- *Committees must adhere to purpose for which appointing authority has 'charged' & should set and monitor goals*
- *Committees should communicate & collaborate*
- *Ad-hoc and subcommittees are advisory only and must make recommendations to parent committee for action*
- *Liaison support & communicate activities between committees*

1) Planning: Each committee should follow a plan of action that details how the committee will accomplish its goals. Major reporting milestones should be established so that the Committee may monitor its progress towards its goals.

A committee is well advised to formally document committee goals and purposes. The Chairman of the committee should

insist upon a precise definition of the committee's goals and

should gain verification of these goals with the appointing authority. This should preclude wasted time and energy through a misdirection of effort. All committee members must understand the formal charge.

Permanent committees should keep their work focused to the committee's stated charge. Those committees statutorily mandated must be certain their statement is consistent with the Law. Recommended changes from the stipulated charge should be forwarded to the appointing authority for review, comment and final approval. Periodically, the statements should be reviewed for relevancy to the changing needs of the Town and revised as appropriate, subject to approval of the appointing authority. It is recommended that committees also establish goals at the beginning of each fiscal year, with a copy provided to the appointing authority.

Ad-Hoc Committees—Ad Hoc committees should review the charge at an early meeting and periodically thereafter in order to keep their work focused and moving toward stated goals. The committee's charge should include goals, expectations, specific responsibilities, periodic reporting dates, and anticipated date of dissolution. The Ad Hoc committee should prepare a plan of action with appropriate timeline in response to its charge and submit to the appointing authority for review and advice.

Subcommittees—Subcommittees are advisory committees created by, and must report all activity to, the parent committee.

2) Coordination and Communication:

The Board of Selectmen, Town Moderator and Town Manager, seek to maximize communication between committees, boards and staff on ongoing issues, projects and priorities. Such coordination and communication will allow for reduced overlap, elimination of duplicative efforts, improved decision making and partnering to benefit citizens and volunteers alike.

Committees should evaluate possible linkages and overlaps of functions. Opportunities for sharing of committee discussions and decisions should be maximized, including sharing of minutes. Joint committee discussions and meetings should be planned when

beneficial to the project or issue at hand and to streamline efforts for persons and groups being served.

3) Reporting Procedures:

Regular contact with the appointing authority is beneficial for all concerned. The Committee Chair is expected to send an occasional letter or make a phone call to keep the appointing authority apprised of the actions and plans of a committee. Regular transmittal of meeting minutes should be the basis of contact. Committees must indicate any limitations on publication of data or facts contained in letters sent to appointing authorities and the Board of Selectmen.

Due to busy schedules and conflicting meeting times, it is sometimes difficult for an appointing authority to attend committee meetings. A written request for the appointing authority to attend committee meetings should be made as far in advance of the meeting date as is possible. The request should detail the items to be discussed, explained, and/or resolved. As needed, the Chair may request a meeting with the appointing authority to resolve problems and report progress.

a) **Town Report:** All committees are required by Town by-law to file a brief annual report of committee operations that appears in the Annual Town Report. The schedule and report format is usually outlined by the chairman of the Town Report Committee in early autumn. The report should detail committee membership and activity over the calendar year and projected activity for the ensuing year.

b) **Budget Requests:** The Town's fiscal year runs from July 1st to June 30th of the following year. The Town Meeting votes annually on appropriations for all departments, boards, committees. It is imperative that committees plan early and submit budget requests in accordance with the budget schedule prepared each year by the Town Manager. Detailed budget data and backup information is essential to justify budget requests. Sound preparation in anticipation of the budget review process is expected.

E. WARRANT ARTICLES

The Annual Town Meeting is held in March. If a relevant article is on the Warrant, or if the committee's charge specifies a report to Town Meeting, the committee should prepare information for Town Meeting. The committee should make these reports clear, concise and brief, keeping in mind the large volume of articles at Town Meeting.

1) Deadlines for Submission: Warrant articles for the Annual Town Meeting are to be submitted by a date set by the Board of Selectmen during the late fall preceding the annual meeting. Warrant articles for a Special Town Meeting are to be submitted according to a schedule dictated by the Board of Selectmen.

2) Process of Submission:

a) Selectmen/Town Manager Committees may submit non-money articles for the warrant directly to the Board of Selectmen. The Board will decide whether to place the request on the warrant. Money articles must be submitted to the Town Manager for review. This normally occurs during the initial budget preparation time.

b) If there is a sharp difference of opinion concerning the merits of a particular warrant article request, the petition process is available to the committee and to private citizens. A formal written request, signed by ten registered voters, will place an article on the warrant. One hundred registered voters can place a warrant article for a special town meeting. These articles must be placed on the warrant exactly as submitted. The Town Meeting Members Association (TMMA) provides excellent information regarding petition submissions.

APPENDIX

- Summary of Conflict of Interest Law— MGL c.268A
- Public Records—MGL c.66 §5A, 10, 14
- Resignation of Appointees or Elected Officials—

COMMONWEALTH OF MASSACHUSETTS—ETHICS COMMISSION
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SUMMARY OF THE CONFLICT OF INTEREST LAW FOR MUNICIPAL EMPLOYEES
(v. May 10, 2013)

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help municipal employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division at our website, phone number, and address above. Municipal counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

I. Are you a municipal employee for conflict of interest law purposes?
You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a "key employee" under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts.

II. On-the-job restrictions.

(a) Bribes. Asking for and taking bribes is prohibited. (See Section 2)

A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his official actions.

Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the municipal employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) Gifts and gratuities. Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b)(2), & 26)

Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts.

Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

Example of violation : A town administrator accepts reduced rental payments from developers.

Example of violation : A developer offers a ski trip to a school district employee who oversees the developer's work for the school district.

Regulatory exemptions . There are situations in which a municipal employee's receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel-related expenses when doing so advances a public purpose. Another commonly used exemption permits municipal employees to accept payment of costs involved in attendance at educational and training programs. Other exemptions are listed on the Commission's website.

Example where there is no violation : A fire truck manufacturer offers to pay the travel expenses of a fire chief to a trade show where the chief can examine various kinds of fire-fighting equipment that the town may purchase. The chief fills out a disclosure form and obtains prior approval from his appointing authority.

Example where there is no violation : A town treasurer attends a two-day annual school featuring multiple substantive seminars on issues relevant to treasurers. The annual school is paid for in part by banks that do business with town treasurers. The treasurer is only required to make a disclosure if one of the sponsoring banks has official business before her in the six months before or after the annual school.

(c) Misuse of position. Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. (See Sections 23(b)(2) and 26)

A municipal employee may not use her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals. Similarly, a municipal employee may not use her official position to get something worth \$50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

Example of violation : A full-time town employee writes a novel on work time, using her office computer, and directing her secretary to proofread the draft.

Example of violation : A city councilor directs subordinates to drive the councilor's wife to and from the grocery store.

Example of violation : A mayor avoids a speeding ticket by asking the police officer who stops him, "Do you know who I am?" and showing his municipal I.D.

(d) Self-dealing and nepotism. Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 19)

A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter

in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

Example of violation : A school committee member's wife is a teacher in the town's public schools. The school committee member votes on the budget line item for teachers' salaries.

Example of violation : A member of a town affordable housing committee is also the director of a non-profit housing development corporation. The non-profit makes an application to the committee, and the member/director participates in the discussion.

Example : A planning board member lives next door to property where a developer plans to construct a new building. Because the planning board member owns abutting property, he is presumed to have a financial interest in the matter. He cannot participate unless he provides the State Ethics Commission with an opinion from a qualified independent appraiser that the new construction will not affect his financial interest.

In many cases, where not otherwise required to participate, a municipal employee may comply with the law by simply not participating in the particular matter in which she has a financial interest. She need not give a reason for not participating.

There are several exemptions to this section of the law. An appointed municipal employee may file a written disclosure about the financial interest with his appointing authority, and seek permission to participate notwithstanding the conflict. The appointing authority may grant written permission if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of his services to the municipality. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

Example where there is no violation : An appointed member of the town zoning advisory committee, which will review and recommend changes to the town's by-laws with regard to a commercial district, is a partner at a company that owns commercial property in the district. Prior to participating in any committee discussions, the member files a disclosure with the zoning board of appeals that appointed him to his position, and that board gives him a written determination authorizing his participation, despite his company's financial interest. There is no violation.

There is also an exemption for both appointed and elected employees where the employee's task is to address a matter of general policy and the employee's financial interest is shared with a substantial portion (generally 10% or more) of the town's population, such as, for instance, a financial interest in real estate tax rates or municipal utility rates.

Regulatory exemptions. In addition to the statutory exemptions just mentioned, the Commission has created several regulatory exemptions permitting municipal employees to participate in particular matters notwithstanding the presence of a financial interest in certain very specific situations when permitting them to do so advances a public purpose. There is an exemption permitting school committee members to participate in setting school fees that will affect their own children if they make a prior written disclosure. There is an exemption permitting town clerks to perform election-related functions even when they, or their immediate family members, are on the ballot, because clerks' election-related functions are extensively regulated by other laws. There is also an exemption permitting a person serving as a member of a municipal board pursuant to a legal requirement that the board have members with a specified affiliation to participate fully in determinations of general policy by the board, even if the entity with which he is affiliated has a financial interest in the matter. Other exemptions are listed in the Commission's regulations, available on the Commission's website.

Example where there is no violation: A municipal Shellfish Advisory Board has been created to provide advice to the Board of Selectmen on policy issues related to shell fishing. The Advisory Board is required to have members who are currently commercial fishermen. A board member who is a commercial fisherman may participate in determinations of general policy in which he has a financial interest common to all commercial fishermen, but may not

participate in determinations in which he alone has a financial interest, such as the extension of his own individual permits or leases.

(e) False claims. Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b)(4) and 26)

A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

Example of violation : A public works director directs his secretary to fill out time sheets to show him as present at work on days when he was skiing.

(f) Appearance of conflict. Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b)(3))

A municipal employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone or that she can be improperly influenced. Section 23(b)(3) requires a municipal employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for a city or town. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a municipal employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

Example where there is no violation : A developer who is the cousin of the chair of the conservation commission has filed an application with the commission. A reasonable person could conclude that the chair might favor her cousin. The chair files a written disclosure with her appointing authority explaining her relationship with her cousin prior to the meeting at which the application will be considered. There is no violation of Sec. 23(b)(3).

(g) Confidential information. Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23(c))

Municipal employees may not improperly disclose confidential information, or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

III. After-hours restrictions.

(a) Taking a second paid job that conflicts with the duties of your municipal job is prohibited. (See Section 23(b)(1))

A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her municipal job.

Example : A police officer may not work as a paid private security guard in the town where he serves because the demands of his private employment would conflict with his duties as a police officer.

(b) Divided loyalties. Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited. Acting as agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid. (See Sec. 17)

Because cities and towns are entitled to the undivided loyalty of their employees, a municipal employee may not be paid by other people and organizations in relation to a matter if the city or town has an interest in the matter. In addition, a municipal employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations in which the town has an interest. Acting as agent includes contacting the municipality in person, by phone, or in writing; acting as a liaison; providing documents to the city or town; and serving as spokesman.

A municipal employee may always represent his own personal interests, even before his own municipal agency or board, on the same terms and conditions that other similarly situated members of the public would be allowed to do so. A municipal employee may also apply for building and related permits on behalf of someone else and be paid for doing so, unless he works for the permitting agency, or an agency which regulates the permitting agency.

Example of violation : A full-time health agent submits a septic system plan that she has prepared for a private client to the town's board of health.

Example of violation : A planning board member represents a private client before the board of selectmen on a request that town meeting consider rezoning the client's property.

While many municipal employees earn their livelihood in municipal

jobs, some municipal employees volunteer their time to provide services to the town or receive small stipends. Others, such as a private attorney who provides legal services to a town as needed, may serve in a position in which they may have other personal or private employment during normal working hours. In recognition of the need not to unduly restrict the ability of town volunteers and part-time employees to earn a living, the law is less restrictive for "special" municipal employees than for other municipal employees.

The status of "special" municipal employee has to be assigned to a municipal position by vote of the board of selectmen, city council, or similar body. A position is eligible to be designated as "special" if it is unpaid, or if it is part-time and the employee is allowed to have another job during normal working hours, or if the employee was not paid for working more than 800 hours during the preceding 365 days. It is the position that is designated as "special" and not the person or persons holding the position. Selectmen in towns of 10,000 or fewer are automatically "special"; selectman in larger towns cannot be "specials."

If a municipal position has been designated as "special," an employee holding that position may be paid by others, act on behalf of others, and act as attorney for others with respect to matters before municipal boards other than his own, provided that he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility.

Example : A school committee member who has been designated as a special municipal employee appears before the board of health on behalf of a client of his private law practice, on a matter that he has not participated in or had responsibility for as a school committee member. There is no conflict. However, he may not appear before the school committee, or the school department, on behalf of a client because he has official responsibility for any matter that comes before the school committee. This is still the case even if he has recused himself from participating in the matter in his official capacity.

Example : A member who sits as an alternate on the conservation commission is a special municipal employee. Under town by-laws, he only has official responsibility for matters assigned to him. He may represent a resident who wants to file an application with the conservation commission as long as the matter is not assigned to him and he will not participate in it.

(c) Inside track. Being paid by your city or town, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 20)

A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job. A municipal employee is also generally prohibited from having an indirect financial interest in a contract that the city or town has with someone else. This provision is intended to prevent municipal employees from having an "inside track" to further financial opportunities.

Example of violation : Legal counsel to the town housing authority becomes the acting executive director of the authority, and is paid in both positions.

Example of violation : A selectman buys a surplus truck from the town DPW.

Example of violation : A full-time secretary for the board of health wants to have a second paid job working part-time for the town library. She will violate Section 20 unless she can meet the requirements of an exemption.

Example of violation : A city councilor wants to work for a non-profit that receives funding under a contract with her city. Unless she can satisfy the requirements of an exemption under Section 20, she cannot take the job.

There are numerous exemptions. A municipal employee may hold multiple unpaid or elected positions. Some exemptions apply only to special municipal employees. Specific exemptions may cover serving as an unpaid volunteer in a second town position, housing-related benefits, public safety positions, certain elected positions, small towns, and other specific situations. Please call the Ethics Commission's Legal Division for advice about a specific situation.

IV. After you leave municipal employment. (See Section 18)

(a) Forever ban. After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee.

If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to their former municipal employer.

The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

Example of violation : A former school department employee works for a contractor under a contract that she helped to draft and oversee for the school department.

(b) One year cooling-off period. For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service. Former municipal employees are barred for one year after they leave municipal employment from personally appearing before any agency of the municipality in connection with matters that were under their authority in their prior municipal positions during the two years before they left.

Example : An assistant town manager negotiates a three-year contract with a company. The town manager who supervised the assistant, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the town in connection with the company's work on the contract for one year after leaving the town.

A former municipal employee who participated as such in general legislation on expanded gaming and related matters may not become an officer or employee of, or acquire a financial interest in, an applicant for a gaming license, or a gaming licensee, for one year after his public employment ceases.

(c) Partners. Your partners will be subject to restrictions while you serve as a municipal employee and after your municipal service ends. Partners of municipal employees and former municipal employees are also subject to restrictions under the conflict of interest law. If a municipal employee participated in a matter, or if he has official responsibility for a matter, then his partner may not act on behalf of anyone other than the municipality or provide services as an attorney to anyone but the city or town in relation to the matter.

Example : While serving on a city's historic district commission, an architect reviewed an application to get landmark status for a building. His partners at his architecture firm may not prepare and sign plans for the owner of the building or otherwise act on the owner's behalf in relation to

the application for landmark status. In addition, because the architect has official responsibility as a commissioner for every matter that comes before the commission, his partners may not communicate with the commission or otherwise act on behalf of any client on any matter that comes before the commission during the time that the architect serves on the commission.

Example : A former town counsel joins a law firm as a partner. Because she litigated a lawsuit for the town, her new partners cannot represent any private clients in the lawsuit for one year after her job with the town ended.

* * * * *

This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. Our website, <http://www.mass.gov/ethics> contains further information about how the law applies in many situations. You can also contact the Commission's Legal Division via our website, by telephone, or by letter. Our contact information is at the top of this document.

Version 6: Revised May 10, 2013

ACKNOWLEDGMENT OF RECEIPT

I, _____,
(first and last name)

an employee at _____,
(name of municipal dept.)

hereby acknowledge that I received a copy of the summary of the conflict of interest law for municipal employees, revised May 10, 2013, on

_____.
(date)

Municipal employees should complete the acknowledgment of receipt and return it to the individual who provided them with a copy of the summary. Alternatively, municipal employees may send an e-mail acknowledging receipt of the summary to the individual who provided them with a copy of it.

Public Records Law

M.G.L. Chapter 66, Public RecordsSection

5A. Records of meetings of boards and commissions; contents.

The records, required to be kept by sections eleven A of chapter thirty A, nine F of chapter thirty-four and twenty-three B of chapter thirty-nine, shall report the names of all members of such boards and commissions present, the subjects acted upon, and shall record exactly the votes and other official actions taken by such boards and commissions; but unless otherwise required by the governor in the case of state boards, commissions and districts, or by the county commissioners in the case of county boards and commissions, or the governing body thereof in the case of a district, or by ordinance or by-law of the city or town, in the case of municipal boards, such records need not include a verbatim record of discussions at such meetings.

Section 10. Public inspection and copies of records; presumption; exceptions.

(a) Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search. The following fees shall apply to any public record in the custody of the state police, the Massachusetts bay transportation authority police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages plus fifty cents (\$.50) for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

The executive director of the criminal history systems board, the criminal history systems board and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending

to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, correctional and any other public safety and criminal justice system personnel shall not be public records in the custody of the employers of such personnel and shall not be disclosed; provided, however, that such information may be disclosed to an employee organization under chapter one hundred and fifty E (c. 150 E) or to a criminal justice agency as defined in section one hundred and sixty-seven of chapter six (c. 6 §167). The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons and shall not be disclosed. The home address and telephone number, or place of employment or education of victims of adjudicated crimes and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

Section 14. Surrender of records by retiring officer.

Whoever has custody of any public records shall, upon the expiration of his term of office, employment or authority, deliver over to his successor all such records which he is not authorized by law to retain, and shall make oath that he has so delivered them, accordingly as they are the records of the commonwealth or of a county, city or town, before the state secretary, the clerk of the county commissioners or the city or town clerk, who shall, respectively, make a record of such oath.

Resignation of Appointees or Elected Officials

Chapter 41: Section 109.

Resignation; notice; residence requirements

Section 109. **No resignation of a town or district officer shall be deemed effective unless and until such resignation is filed with the town or district clerk or such later time certain as may be specified in such resignation.** Upon receipt of a resignation the clerk shall notify the remaining members, if the resignation is received from a board of two or more members, and he shall further notify the executive officers of the town or district and such notification shall include the effective date of the resignation. Unless otherwise provided by general or special law, ordinance or by-law, a person need not, in order to accept appointment to a public office in a town or district, be a resident of such town or district; provided, however, that if an appointed town or district officer is required to become a resident within a period of time specified at the time of his appointment by the board or officer making the appointment but fails to do so within the time specified, or if an elected or appointed town or district officer removes from the town or district in which he holds his office, he shall be deemed to have vacated his office.

Town Meeting Resolution of April 7, 1976

MOTION: That the Town adopt the following resolution under this article:

Resolved that Town Meeting Members abstain from voting in any particular matter in which to his knowledge, he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has any economic interest in the particular matter under consideration.

I further move that the Town Clerk provide each new Town Meeting Member with material embodying the substance of this resolution.

*Resolution Adopted under Article 81 of the Adjourned
Town Meeting of April 7, 1976*

